ment, but actually signed contracts recognizing the ceiling, the Court could "discern no basis in the statutory policy encouraging collective bargaining for giving the employer a better bargain than he has been able to strike at the bargaining table." (394 U.S. at 433). Those statements clearly support the decision below. In this case, the Association successfuly resisted the Union's attempt to incorporate a work production limitation clause in the collective bargaining agreement. If the Union's position were upheld, the Union, not the employer, would be getting a better bargain than it had been able to strike at the bargaining table. The result sought by the Union would frustrate and obstruct the statutory policy expressed in sections 8(b)(3) and 8(d) of the Act of encouraging collective bargaining and requiring parties to live up to the terms of their collective bargaining agreements.

B. The Board's complaint was not time barred under section 10(b) of the Act.

The unfair labor practice charge was filed on December 27, 1968, well within the six month limitation period provided by section 10(b) of the Act. The fact that the Union first adopted its 10-room rule on March 5, 1968 is immaterial. It was the Union's intensified enforcement of its rule during the life of and in violation of the terms and conditions of the September 9, 1968 agreement that constitutes the unfair labor practice charged against and committed by the Union.

The decision below on the 10(b) issue is not in conflict with any decision of this Court or any decision of another Court of Appeals. *Local Lodge No. 1424, International Association of Machinists (Bryan Manufacturing Co.)* v. *N.L.R.B.*, 362 U.S. 411 (Petition, p. 15) is inapplicable to the facts of this case. *Bryan* involved enforcement of a union security clause in a collective bargaining agreement executed when the union did not have majority status. The Court there stated that ". . . the entire foundation of the unfair labor practice charged was the Union's time-barred

lack of majority status when the original collective bargaining agreement was signed. In the absence of that fact enforcement of this otherwise valid union security clause was wholly benign." (362 U.S. at 417-418). In this case, unlike *Bryan*, the Union's enforcement of its 10-room rule constituted an independent unfair labor practice, separate and apart from the adoption of the rule.

C. The Board had jurisdiction to issue the order enforced by the Court below.

As the Court below held, "the Board and the courts clearly have the power pursuant to section 8(d) to compel the parties to a collective bargaining agreement to abide by the terms of their agreement, and to amend those terms only through the process of collective bargaining." (App-A, p. A-9). On this issue, as well as on the other issues, there is no conflict of decision.

The question in *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (Petition, p. 28) was whether a state court was divested of jurisdiction over a suit for violation of a collective bargaining agreement by section 301(a) of the Labor Management Relations Act of 1947. It did not involve the question of the Board's jurisdiction over unfair labor practices.

N.L.R.B. v. *C & C Plywood Corp.*, 385 U.S. 421 (Petition, p. 29) supports the jurisdiction of the Board in this case. Petitioner contends (Petition, p. 31) that under the holding in *C & C Plywood*, the existence of provisions in the agreement for arbitration "would seem to have limited, if not preempted, the Board's jurisdiction of the case." Nothing in *C & C Plywood* leads to that conclusion. Petitioner's contention is clearly contrary to section 10(a) of the Act and the law as laid down by this Court. Section 10(a) provides that the Board's power to prevent any person from engaging in any unfair labor practice "shall not be affected by any other means of adjustment or prevention that has been or may be estab-

lished by *agreement*, law or otherwise . . ." (italics added). This Court has held that the existence of an arbitration clause in a collective bargaining agreement does not preempt the Board's jurisdiction over unfair labor practices or its power to remedy same by cease and desist orders. *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967).

II. This case presents no important question of federal law.

The decision below is based upon the Court's interpretation of a particular collective bargaining agreement and findings as to the nature and effect of the particular conduct engaged in by the Union. The dissenting opinion reflects a different interpretation of the same agreement. Although this case is important to the Union, to the Association and to the industry in which they are engaged, it does not present an important question of federal law for this Court. The decision neither sanctions nor outlaws work production standards *per se*. It merely represents an application of a well established principle of federal labor law, namely that parties should live up to the terms of their collective bargaining agreements.

CONCLUSION

For the foregoing reasons, the Union's petition for a writ of certiorari should be denied.

Respectfully submitted,

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